

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ROGER FOUNTAIN**

**Plaintiff,**

**v.**

**US STANDARD PRODUCTS CORP.**

**Defendant.**

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**Case No. 4:21-cv-3043**

**DEFENDANT US STANDARD PRODUCTS CORP'S EXHIBIT INDEX**

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Case Number: 215200242158

Roger Fountain  
Plaintiff  
vs.  
US Standard Products Corp  
Defendant

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§

In the Justice Court  
Harris County, Texas  
Precinct 5, Place 2  
16715 Clay Road  
Suite 3  
Houston, TX 77084  
713-274-0800  
[www.jp.hctx.net](http://www.jp.hctx.net)

**Citation (Small Claims Case)**

THE STATE OF TEXAS  
COUNTY OF HARRIS

**TO: ANY SHERIFF, CONSTABLE, PROCESS SERVER CERTIFIED UNDER ORDER OF THE SUPREME COURT, OTHER PERSON AUTHORIZED BY COURT ORDER, OR CLERK:**

Deliver this citation, together with a copy of the petition, to: Lauren Pierce

US Standard Products Corp  
6510 NW 21<sup>st</sup> Avenue  
Ft Lauderdale, FL 33309

**TO THE DEFENDANT:**

**You have been sued. You are commanded to appear by filing a written answer to the petition filed by Plaintiff with the Clerk of the Court on or before the end of the 14<sup>th</sup> day after the date of service of this citation. If you fail to file an answer as required, a judgment by default may be rendered for the relief demanded in the petition.**

Date Petition Filed: 08/24/2021

Nature of demand made by Plaintiff(s): money owed in the amount of \$20,000.00. A copy of the petition is attached.

**Notice**

**You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14<sup>th</sup> day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult the Texas Rules of Civil Procedure, Part V, Rules of Practice in Justice Courts. A copy of the Rules is available at <http://www.jp.hctx.net/> or at the Justice Court.**

Date: 8/24/2021



/s/ Ana Gallo  
Clerk of the Court  
Harris County Justice Court  
Precinct 5, Place 2

Address of Plaintiff

8524 HWY 6 N Suite 419  
Houston TX 77095

Address of Plaintiff's Attorney

## Small Claims Petition

NO. 215200242158ROGER FOUNTAIN

§ In the Justice Court of Harris County, Texas

§ Precinct \_\_\_\_\_ Place \_\_\_\_\_

Plaintiff(s)

vs.

U.S. STANDARD PRODUCTS  
CORP**RECEIVED****AUG 24 2021**

Defendant(s)

Plaintiff: ROGER FOUNTAIN**Hon. Jeff Williams**  
**JUSTICE OF THE PEACE 5/2**

Describe the legal nature of the plaintiff (e.g., individual, sole proprietorship, partnership, corporation)

INDIVIDUALDefendant: US STANDARD PRODUCTS CORPAddress: 41 HONECK STCity: ENGLEWOOD State: NJ Zip: 07631 Date of Birth (if applicable): N/A

Describe the legal nature of the defendant (e.g., individual, sole proprietorship, partnership, corporation)

CORPORATION\*Defendant may be served by serving LAUREN PIERCE

(state the name of the defendant if defendant is an individual, or state the name and title of the person who is authorized to receive service of process for the defendant if defendant is a partnership, limited partnership, corporation, or limited liability company), who may be served at

6510 NW 21ST AVE, FT. LAUDERDALE, FL 33309  
(state the address for service of process).The defendant's usual place of business or residence, or other place where defendant can probably be found is 41 HONECK ST  
ENGLEWOOD, NJ 07631

## Cause of Action

(State the cause of action in plain and concise language, sufficient to give fair notice of the claim and to provide enough information to enable the defendant to prepare a defense. You may include information showing venue is proper in the Justice of the Peace Precinct in which you are filing. If you are seeking personal property, you must describe the property and state the value of the property.)

VIOLATIONS OF TCPA FOR PHONE CALLS  
AND TEXT MESSAGES

Relief Requested (Describe the relief you are requesting, itemizing the amount of damages you are seeking.)

\$20,000.00 FOR DAMAGES ALLOWED BY FEDERAL LAW

Respectfully submitted,

Signature of Plaintiff or Plaintiff's Attorney of Record

Printed Name: ROGER FOUNTAIN

State Bar No. \_\_\_\_\_

Address: 8524 HWY 6 N #419 HOUSTON, TX 77095Telephone: 972-890-4059 Fax Number: \_\_\_\_\_E-Mail Address: rfountain@live.com☒ Plaintiff consents to the e-mail service of the answer and any other motions or pleadings to this e-mail address.

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**CAUSE NO. 215200242158**

**ROGER FOUNTAIN,**

**Plaintiff,**

**v.**

**US STANDARD PRODUCTS CORP.,**

**Defendant.**

**IN THE JUSTICE OF THE  
PEACE COURT**

**PRECINCT 5, PLACE 2**

**HARRIS COUNTY, TEXAS**

**DEFENDANT US STANDARD PRODUCTS CORP.'S  
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Standard Products Corp. ("Defendant"), files this Original Answer and Affirmative Defenses to the claims asserted by Plaintiff Roger Fountain in his Small Claims Petition, and would show as follows:

**I.  
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant hereby asserts a general denial to all of the material allegations contained in Plaintiff's Small Claims Petition and demands strict proof thereof.

**II.  
AFFIRMATIVE DEFENSES**

Defendant raises the following affirmative defenses, but reserves the right to amend its Answer to raise any additional affirmative defenses which it may have against Plaintiff's claims:

2. Plaintiff lacks standing to bring the claims that he is purportedly asserting.
3. The Complaint fails to state a claim upon which relief may be granted.
4. Plaintiff has not suffered a concrete and particularized injury.

5. To the extent that Plaintiff received the subject text message(s) and/or telephone call(s) alleged in the Complaint, prior express consent, as well as prior express written consent, was obtained for the purpose of contacting the phone number at which Plaintiff alleges to have received the subject text message(s) and/or telephone call(s) and therefore, Plaintiff's claims must fail.

6. Defendant incorporates by reference all provisions set forth within 47 U.S.C. § 227 and 47 C.F.R. § 64.1200 (including prior versions of this statute and regulation) and relies herein on any safe harbor provisions, exemptions, exceptions, limitations, conditions, or other defenses that may be set forth herein.

7. Defendant states that it has complied with all applicable statutes and regulations, thereby barring any and all of Plaintiff's claims.

8. Plaintiff's claims are barred by the doctrines of estoppel, waiver, consent, and other equitable doctrines.

9. Plaintiff's claims barred because any alleged acts or omissions of Defendant giving rise to the alleged claims were the result of an innocent mistake and/or bona fide error notwithstanding that Defendant established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in alleged violation of the regulations prescribed by 47 U.S.C. § 227. Defendant acted at all times in a reasonable manner in connection with the events at issue in this case.

10. To the extent that Plaintiff received the subject text message(s) and/or telephone call(s) alleged in the Complaint, an automatic telephone dialing system as that term is defined by 47 U.S.C. § 227, the implementing regulations promulgated thereunder, the Federal



Communications Commission's rulings and/or decisional law interpreting same was not used to place the subject text messages.

11. Application of the TCPA, as interpreted by the FCC, violates the First Amendment to the United States Constitution because such application relies upon content-based restrictions of protected speech. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) ("Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.").

12. The TCPA violates the First Amendment to the United States Constitution because it is an unconstitutional regulation of free speech. *See Martin v City of Struthers, Ohio*, 319 U.S. 141 (1943).

13. Any loss, injury, or damage incurred by Plaintiff was proximately caused by the acts of third parties whom Defendant neither controlled nor had the right to control, and was not proximately caused by any acts, omissions or other conduct of Defendant.

14. Plaintiff's claims are barred by laches.

15. Any loss, injury, or damage incurred by Plaintiff was caused by independent contractors for whose actions Defendant is not liable.

16. Plaintiff has failed to join all necessary and/or indispensable parties to this action.

17. Plaintiff has not suffered any damages due to Defendant's alleged actions. Plaintiff must sustain an injury in fact specific to each individual text message for which Plaintiff claims a violation.

18. This Court lacks personal jurisdiction over Defendant.



**III.**  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Defendant further respectfully requests that Plaintiff take nothing and that all costs of court be taxed against Plaintiff. Defendant further requests all such other and further relief to which it may show itself justly entitled.

Date: September 10, 2021

Respectfully submitted,

/s/ C. Bryce Benson

C. Bryce Benson

Texas Bar No. 24031736

[bryce.benson@akerman.com](mailto:bryce.benson@akerman.com)

Michael B. Hess

Texas Bar No. 24095710

[michael.hess@akerman.com](mailto:michael.hess@akerman.com)

**AKERMAN LLP**

2001 Ross Avenue, Suite 3600

Dallas, Texas 75201

Telephone: 214.720.4300

Facsimile: 214.981.9339

**ATTORNEYS FOR DEFENDANT  
US STANDARD PRODUCTS CORP.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 10, 2021, a true and correct copy of the foregoing document was served, in accordance with the Texas Rules of Civil Procedure, on all counsel of record.

/s/ Michael B. Hess

Michael B. Hess

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## Justice of the Peace Courts Case Information

**Case Summary for 215200242158 as of September 17, 2021 11:06:20 AM :**

### General Case Information

**Case Number:** 215200242158  
**Court Info:** [Click here to visit court web site.](#)  
**Style of Case:** Roger Fountain vs. US Standard Products Corp  
**Filed Date:** August 24, 2021  
**Days Old:** 24  
**Case Status:** Active  
**Disposition:**  
**Disposition Date:**  
**Judgment Date:**

### Civil Information

**Nature of Claim:** Small Claims  
**Claim Amount:** \$20,000.00

### Party Information

<b>Party Name:</b>	Fountain, Roger
<b>Party Type:</b>	Plaintiff

<b>Party Name:</b>	US Standard Products Corp
<b>Party Type:</b>	Defendant

### Hearing Information

## Payment Information

<b>Payment Date:</b>	August 24, 2021
<b>Amount:</b>	\$49.00
<b>Payment Type:</b>	Cash
<b>Transaction Type:</b>	Payment
<b>Receipt Description:</b>	Payment
<b>Payor Name:</b>	Fountain, Roger

**Event Information****Event Description:** Citation**Date Added:** August 24, 2021**Event Description:** Original Petition Filed**Date Added:** August 24, 2021**Event Description:** Small Claims-Citation Money Damages**Date Added:** August 24, 2021**Event Description:** Notice**Date Added:** September 08, 2021**Event Description:** Answer Filed**Date Added:** September 10, 2021**Bond Information****Judgment Information****Disclaimer**

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